P6 Date of Hearing 1/3/38.

C.F. 2

1938

Department of Rev

OFFICE of the Bd of Rev.

STATION Madras.

15 MR 25.2

Mis No. 627

A 841/38

Dated 25/1/38

with Emly.
DESPATCHED
26 FEB 1938

Enclosure to Despn dt 25/2

Pages in the file

(SUBJECT.)

Suits - (Bellary) - Bellary D.M.C - Dune 655/37-K Veerapuram Vgt - Headmans Office - Re Coverts - Defence - Orders passed

C.F. 32.

In reply, please quote number, date and short title.*

Date of Reg 7/3/38

Received ... Registered ... Revenue DEPARTMENT.

A841

From (Name) E.C. Wood Esq., I.C.S.

(Designation) Collector

Post Box ... (Station) ...

Telegraphic Address ...

BOARD OF REVENUE 18 FEB 1938 MADRAS

To

The Secretary to the Board of Revenue,

Madras.

Ref. A1 No. 5838/37, dated 17-2-38 19

Sir,

Enclosures

Two

Spare Copies

Suits - Bellary District Munsif's Court, Bellary - O.S. 638/37 - plaintiff Hampana Gowd of K. Veerapuram Defendants - Collector of Bellary & Chinna Rudrayya sanction of defence.

Hampana Gowd, son of Chinna Nagana Gowd, of K. Veerapuram village of Bellary Taluk filed a suit (O.S. 638/37) in the Court of the District Munsiff, Bellary for the recovery of the office of village headman of K. Veerapuram village against the Collector of Bellary (1st Defendant) and Chinna Rudra Gowd (2nd defendant), who is the present holder of the office. The appointment of the 2nd defendant Chinna Rudra Gowd to that office was upheld by the Board of Revenue (on appeal) in B.P. Rout. 3268, dated 14-7-1937

2. I enclose a copy of the plaint, a precis of the case, and the draft written statement prepared by the Government Pleader, Bellary for the approval of the Board and sanction of defence. Summons were served on me by the District Judge, Bellary on 28-11-37. I have applied for the usual three months time and the suit stands posted to 7th March 1938. I request that the sanction of the Board may be communicated to me early.

3. A copy of this office order in D.Dis. 1684/37, dated 8th June 1937, awaiting the threatened suit of the plaint

suit of the plaintiff, and the relevent records referre to in the precis of the case are enclosed for perusal a return.

18-12-38.
For Collector.

JRM/18-2.

Enclosures

List

1. Bellary R.Dis Rwis 526/38 (L)
2. — do — R.S. 2/32 (X) (N)
3. — do — R.S. 6/32
4. Admn R.Dis. R.S. 3/36 } Sent Separately by Regd. parcel
5. Collector R.Dis AS. 4/36 (K)
6. — do — R.Dis 2136/37

Copy of Plaint under section 80 & Order 7, Rule 1 C.P.C.

1. The plaintiff.- Hampana Gowd son of Chinna Nagana Gowda aged 27 years, Lingayat, Agriculturist, resident of K.Veerapuram villa Bellary Taluk.

Address of plaintiff for service of process etc. is care of T. Krishnamurthi B.A. B.L., Vakil, Bellary.

2. The Defendants.-

1. The Secretary of State for India in Council represented by the Collector of Bellary, Bellary.

2. Chinna Rudra Gowd son of Kare Gowd aged 25 yaars, Lingayat, Reddy-in-charge, resident of K.Veepuram, Bellary taluk.

3. One Pedda Nagana Gowd was the last undisputed Register holder of the office of Village Reddy of K.Veerapuram village in Bellary taluk. After his death, his son Siddalingana Gowd was appointed Misel Reddy of K.Veerapuram, but as he failed to satisfy the examination tests, he was removed from office in 1928 and on 30-6-1929, the 2nd Defendant was appointed to the post, which he holds even now.

p.117 (N)
pp 105-107 (I)

The plaintiff applied before the Revenue authorities to get the post and litigated in the matter in Revenue Courts (R.S. 2/32 of Bellary R.D.O's Court), but without success, as he was then found to have not qualified educationally, and otherwise.

pp 67-69

In O.S. No. 718/1934 on the file of this Court, he filed a suit and obtained a Declaratory Decree against the 2nd defendant declaring his rights to the office. But still, as Government was not made a party to that suit, the Decree in O.S. 718/34, was ignored by Government.

p 45 (K)

5. The plaintiff is the son of Chinna Naganna Gowd, Chinna Naganna Gowd and the last misildar Reddy Pedda Nagana Gowd were own brothers. Thus, plaintiff is the brother's son of the last Full holder of the office, and is the nearest heir thereto, and was not given the post only because he was found by the authorities not to have been educationally qualified then.

The 2nd Defendant Chinna Rudra Gowd is a total stranger to the family of the late holder of the office, is Pedda Nagana Gowd. His appointment permanently on 31-6-1929 by a departmental order of the then R.D.O. of Bellary, is against law, as under the Madras hereditory Village Officers' Act, 1895, a stranger cannot be appointed

appointed to the post, and a selection shall oe made from among the members of the Family. The appointment dated 31-6-1929 should at best be construed in Law as only a temporary appointment.

7. As the Government still remained abdurate and stood by its order dated 31-6-1929, a Notice under section 80 C.P.C. was issued to the 1st Defendant as also another notice to the 2nd Defendant, and the present suit is filed to vindicate the legal rights of the plaintiff's family. The 1st defendant has replied that a suit may be filed and the 2nd defendant has not replied at all.

8. The cause of action for this suit arose on 31-6-1929, being the date of appointment permanently of the 2nd Defendant to the K-Veerapuram Misal-Reddy ship, by the 1st Defendant. The cause of action arose in Bellary, within the jurisdiction of this Court.

9. The 2nd Defendant is made a pro-forma party to the suit, as he is interested in the result of this suit, though the relief sought for is only against the 1st defendant.

10. The plaintiff pays a court fees of Rs.1-1-0 being the Court fees under section 7 of clause C of Court Fees Act, on the suit valuation of Rs.10-0-0 being the value for jurisdiction.

11. The suit is in time as being within 12 years of the permanent appointment of 2nd defendant by the 1st defendant, and coming within the perview of Article 124 of the Limitation Act.

12. The plaintiff therefore prays:

A. That a Decree be passed declaring that the appointment of the 2nd Defendant permanently by the 1st Defendant by the order dated 31-6-1929 is illegal.

B. For a Mandatory injunction directing the 1st defendant to appoint either the plaintiff or any other member of the Family of the late Pedda Nagana Gowd, as Misal-Reddy of K.Veerapuram.

C. For costs of suit as against the contesting defendants.

D. Such other reliefs as this court deems fit.

....

vakil for plaintiff. plaintiff.

I, Hamapana Gowd the plaintiff above declare that what all is stated in paras 1 to 12 of this plaint, is true and correct to the best of my knowledge and belief. Signed and verified at Bellary this the 20th day of October 1937.

plaintiff.

/True Copy/

Precis of the Case.

For failure to qualify himself in time, Siddalingana Gowd forfeited his right to the office of the Headman of K.Veerapuram village of Bellary taluk. Yaganti Gowd, Chinna Rudra Gowd and Hampana Gowd claimed the office. Before the matter was finally disposed of by the R.D.O., Yganti Gowd died. As Hampana Gowd was not qualified, and did not stand the oral and written test held by the R.D.O., he was found by the R.D.O. to be too incompetent to be appointed as headman. Chinna Rudra Gowd was therefore permanently appointed as headman of K.Veerapuram (R.D.O's R.Dis.C. 526/28, dated 30-6-1929).

Hampana Gowd sued against Chinna Rudra Gowd in the court of the R.D.O, Bellary for the recovery of the office. The suit was dismissed in R.D.O's R.Dis. R.S. 2/32 on the ground that the plaintiff was not qualified on the date on which the vacancy was permanently filled up.

One Busse Gowd, a minor by next friend Hamapana Gowd, brought a suit for the recovery of the office of the headman of K.Veerapuram. Since he was admittedly a minor, there was no provision for the registry of second minor according to the law at that time. Act VII of 193 which came into force subsequently had no retrospective effect as regards cases pending action under Act III of 1895. This suit was therefore dismissed by the R.D.O., Bellary (R.Dis. 3 and 6/32).

Bussana Gowd, the minor, sued for the same office after attaining majority and succeeded in getting it in R.S. 3/36 of R.D.O,Adoni.

In the appeal preferred by Chinna Rudra Gowd against the order of the R.D.O., Adoni, appointing Bussana Gowd to the office of the village munsif of K.Veerapuram, the Collector in his R.Dis. A.S. No. 4/36 allowed the appeal and restored Chinna Rudra Gowd to the office of the village munsif of K. Veerapuram on the ground that Act VII of 1930 had no retrospective effect. The second appeal presented to the Board of Revenue against the Collector's decision was also dismissed by the Board in its B.P. Rout. No. 3268/14th July 1937 communicated with Collector's Ref.C. 2136/37, dated 26-7-1937.

Sd. E.C. Wood,
Collector, Bellary.

/True Copy/

P.T.O.

Copy of this office Endorsement R.Dis. 1684/37, dated 8th June 37. to Hamapanagowd of K. Veerapuram village c/o. M.R.Ry. T. Krishnamoorthi, vakil, Bellary.

Read.- Notice under section 80 of the C.P.C. from Hampana Gowd s/o. Chinna Nagana Gowd of K. Veerapuram of Bellary Taluk.

The threatened suit is awaited.

Sd.- G. Batty,
For Collector.

/True Copy/

Copy of Written Statement on behalf of the 1st defendant.

The defendant above named submits as follows:

1. This defnedant specifically denies all the allegations in the plaint which are not expressly admitted herein and puts the plaintiff to strict proof of the same.

2. Description of the 1st defenant is incorrect in view of the Govt .of India Act, 1935. The plaint has therefore to be amended.

3. The allegations in para 3 of the plaint are substantially correct. The date of the order appointing the 2nd defendant is 30-6-1929 and not 31-6-1929.

4. Para 4 of plaint (a).- Reference to R.S. 2/32 and the decision therein are correct. This defendant is not aware of the suit in O.S. 718/34 B.M.C. The plaintiff is put to strict proof of the same.

(b) If true the present suit is barred under order II C.P.C.

5. Paras 5 & 6 of the plaint.- The plaintiff is put to strict proof of the allegations in para 5 & 6 as to the relationship of parties and as to the 2nd defendant being a stranger. This defendant denies that the appointment of the 2nd defendant in the circumstances of the case is against law. It is a perfectly valid and legal order.

6. This defendant admits the notice issued before suit. It was not a legal notice as per the Govt. of India Act, 1935, having been addressed to the Secretary of State.

7. The plaintiff's suit is not properly valued, and the court fee paid is insufficient.

8. The plaintiff's suit is not maintainable as Section 21 of Act III of 1895 bars the jurisdiction of a civil court. The decision of the Revenue courts is therefore final and conclusive in the circumstances.

9. The plaintiff's suit may therefore be dismissed with costs.

Verification.

I, E.C. Wood the Collector of Bellary do hereby declare at Bellary that what is stated in all the paras here-of is true to my knowledge and information which I believe to be true.

JRM/18-2. /True Copy/

M 1 (C.A.H)

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying		
When copied		
When examined	28	Dayal
When signed	26-2-38	
When despatched.		

SUBJECT :—

Suits- (Bellary)- Bellary D.M.C-O.S
638/37- K. Veerapuram vge- Headman
Office- Recovery- Defence- [illegible]
Orders passed.

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO* :—

No. A84/38 From the Collr of Bellary R/A1 No. 5838/37, dated 17/2/1938.

" _____ " _____ " _____ " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

~~Order~~ / Resolution ~~Ms.~~ / Rout. No. 627, dated 25/2/ 1938.

The collr is informed that he need not contest the suit and that it will suffice, if he files the following written statement the court

civil courts have no jurisdiction to try the suit under section 21 of Act III of 1895. In any event the govt will abide by the court's decision and they may be exonerated from costs.

No. 183

For Insurance Notices see reverse.
Stamps affixed except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no acknowledgment is due.

Rs. 3 As. 0
Date-stamp.

Received a registered * [illegible]
addressed to [illegible]

[illegible]

[illegible]

[

Suits - (Bellary) - Bellary D.M.C -
O.S No 638/37 - K. Veerapuram vge -
Headman's office - Recovery - Defence.

A.S 41/37 - Collr's Rep A1-5838/37 D/7 2.38.

T.O.A.S (L.R)

Please see the collr's letter at pp 1-2 cf.

2/ The govt (Ist defendant) are not interested in the subject matter of the suit as the dispute is between the plaintiff and the second defendant who is the present holder of the Headman's office in dispute. The govt need not contest the suit and it will suffice, if a written statement as follows is filed in the court :-

'Civil courts have no jurisdiction to entertain the suit under sec 21 of Act III of 1895. In any event the govt will abide by the court's decision and they may be exonerated from costs'.

The collr may be told accordingly.

hw
23.2.38.
24.2.38 T.S. (R)
24.2.38
M.2 24/2

To A.S (L.R)

A.S (L.R)

Draft submitted

25-2-38